IN THE

Supreme Court of the United States

October Term, 1962.

No. 509.

ELIJAH REED,

Petitioner,

v.

STEAMSHIP YAKA, Etc, et al.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR PETITIONER.

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OPINIONS OF THE COURTS BELOW.

The opinion of the District Court for the Eastern District of Pennsylvania is reported at 183 F. Supp. 69 (E. D. Pa. 1960) (R. 58a). The opinion of the Court of Appeals for the Third Circuit is reported at 307 F. 2d 203 (R. 84). The opinion of the Court of Appeals for the Third Circuit on the Petition for Rehearing is reported at 307 F. 2d 203 (R. 101).

JURISDICTION.

The judgment of the Court of Appeals was entered on July 16, 1962. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254(1).

QUESTION PRESENTED.

Is a vessel in the possession and control of a demise charterer liable in rem for injuries to a longshoreman caused by the unseaworthiness of the vessel, if the unseaworthy condition is created while the demise charterer is in possession and control of the vessel, and if the demise charterer is also the stevedore-employer?

STATEMENT OF FACTS.

Elijah Reed, the petitioner herein, is a longshoreman who was injured while employed by Pan-Atlantic Steamship Corporation and engaged in the loading of the Steamship "Yaka". The ship was and is owned by Waterman Steamship Corporation; however, at the time of Reed's injury the ship had been demised to and was being operated by Pan-Atlantic Steamship Corporation as bareboat charterer.

The accident occurred in the hold of the ship when a wooden pallet upon which Reed was standing broke. The pallet was part of a staging which had been supplied to the vessel by the stevedore for the performance of the maritime service in which the longshoremen were engaged.

Petitioner filed a Libel In Rem against the S/S "Yaka" alone. A trial limited to the issue of liability resulted in a finding that Reed's injuries had been caused by an unseaworthy condition created by Pan-Atlantic during the demise, 183 F. Supp. 69 (E. D. Pa. 1960). Although Reed was limited to the benefits of the Longshoremen's and Harborworkers' Compensation Act, so far as his employer, Pan-Atlantic was concerned, the court nonetheless concluded that the "Yaka" itself was accountable in rem for the injuries caused by its unseaworthiness. At the same time, Pan-Atlantic was held liable over to Waterman Steamship Corporation under the express terms of its indemnity agree-

ment. Both Waterman on behalf of the "Yaka" and Pan-Atlantic appealed.

The Court of Appeals for the Third Circuit reversed. While affirming the determination of unseaworthiness, the Court of Appeals below held that liability in rem could not possibly arise in the absence of an underlying in personam liability of someone having an interest in the vessel. From this premise the court reasoned that since neither the owner nor the employer was liable in personam to the injured employee there was no underlying obligation which would give rise to an in rem recovery against the vessel. It bottomed this analysis upon the fact that the unseaworthiness arose after the demise charter, and the Longshoremen's and Harbor Workers' Act prevented Reed from recovering against Pan-Atlantic. Asserting the case of *Smith v. Mormacdale,* 198 F. 2d 849 (3 Cir. 1952) as authority for its holding, the court reversed the determination of the District Court.

A petition for rehearing was denied with Chief Judge Biggs and Judge Staley dissenting. Judge Biggs stated that the decision was contrary to the reasoning of this court in *Plamals v. The Pinar Del Rio,* 277 U. S. 151 (1928) and *Seas Shipping Company v. Sieracki,* 328 U. S. 85 (1946) and opined further that the majority view which precluded an in rem obligation where there was no underlying in personam obligation was unwarranted. Judge Staley, the author of the Smith opinion upon which the majority relied, stated that that decision was inapplicable to a case where the shipowner was not the employer.

ARGUMENT.

I. The Decision of the Court Below Violates the Basic Maritime Principle That a Lien Attaches Against a Vessel in Case of Personal Injury and the Vessel Itself Is Held Accountable as the Responsible Personality Exclusive and Independent of Other Concurrently Responsible Parties.

In the United States we have never waivered from the long established doctrine that a maritime injury impresses upon the vessel a maritime lien for injuries received by a person lawfully on board the vessel. See *The John G. Stevens*, 170 U. S. 114; the *Anaces*, 93 F. 240 (4th Cir. 1899); 1 Benedict, Admiralty § 12, p. 23; Price, The Law of Maritime Liens, 140.

This Court has decided that this maritime lien which arises upon injury is the foundation of the proceeding *in rem*. To use the language of Mr. Justice Field, the *Rock Island Bridge*, 73 U. S. (6 Wall.) 213, 215 (1867):

> "The lien and the proceeding in rem are, therefore, correlative—where one exists, the other may be taken and not otherwise."

This rule has been attacked on only one occasion. In 1858 the 12th Admiralty Rule was amended so as to take away the right to proceed in rem against domestic vessels in cases in which there was a lien given for necessaries by a local statute. The amendment proceeded upon the assumption that the right to proceed in rem was a matter of procedure since the Act of 1842, 5 Stat. 516, empowering the Supreme Court to make admiralty rules apply only to matters of procedure. The Amendment of 1858 remained in effect until 1872 when the Rule was changed to permit suits in rem against the ship or against the master alone in personam. The issue was presented to this Court in the *Lottawanna*, 21 U. S. 582 (1875), which involved an

action in rem for supplies furnished in the home port of the vessel for which there was no lien given by local statute. If the right to proceed in rem were merely a matter of procedure which could be validly regulated by the Supreme Court under its rule-making power, then it would seem from the wording of the 12th Admiralty Rule as amended in 1872, that there was a right to proceed in rem regardless of state statutes giving liens. But, the court held that the right to proceed in rem was not a matter of procedure, but a "right of property" and that the effect of the change of 1872 was simply "to remove all obstructions and embarrassments in the way of instituting proceedings in rem".

Since that decision there has been no doubt in our jurisprudence that the maritime lien is the foundation of the proceedings in rem in the admiralty and that there is no right to bring on in rem action unless there is a lien. The *Resolute*, 168 U. S. 437 (1897); the *Rock Island Bridge, supra.*

The majority view of the court below that the in rem proceeding is merely a procedural device and that no in rem obligation can come into being unless there is an underlying in personam obligation is in conflict with well-established principles.

The course of litigation has brought before the courts a great variety of situations in which the issue for decision was whether in rem accidents would lie for claims against the vessel where the owner of the ship was not personally liable. While the doctrine that the ship is not liable unless the owner or his servants are responsible has been consistently adhered to by the English courts, the American rule is that personal liability of the owner is not essential to the existence of the lien. Price, The Law of Maritime Liens, p. 5. In the *Malek Adhel*, 43 U. S. (2 How.) 210 (1844) it was contended that the innocence of the owner of a vessel precluded the confiscation of the ship. Mr. Justice Story in denying this contention stated:

> "It is not an uncommon course in the admiralty, acting under the law of nations to treat the vessel in which or by which, or by the master or crew thereof, a wrong or offense has been done as the offender, without any regard whatsoever to the personal misconduct or responsibility of the owner thereof."

The independent liability of a ship has been established against various factual backdrops. Thus, a good-faith purchaser of a vessel may have his ship arrested and sold even though he is subject to no in personam liability since the maritime lien adheres to the property. See *The Bold Buccleugh*, 7 Moore P. C. 267 (1861); 1 Benedict, Admiralty, p. 25. A vessel under a bareboat charter is liable in rem to an injured party, despite the lack of control on the part of the owner. *The Barnstable*, 181 U. S. 464 (1901); *United States v. The Helen*, 164 F. 2d 111 (2 Cir. 1947); *Davis v. M/V Esso Delivery No. 13*, 100 F. Supp. 285 (D. Md. 1951). Ships have been forfeited for statutory violations even though there has been no privity or knowledge on the part of the owner. *The Little Charles*, 26 Fed. Cases 979, Case No. 15,612 (C. C. D. Va. 1819); *The Malek Adhel*, 43 U. S. (2 How. 210 (1844)).

Mr. Justice Holmes, in The Common Law, drew from the case of *The Ticonderogo* (Swabey 215, 217) to illustrate the liability of a vessel in rem under charter for collision damages even though the vessel owner could not be held liable for said damage and from *The China*, 74 U. S. (7 Wall.) 53 (1869), wherein this Court held the vessel liable for collision damage even though she was under the control not of her owner, but of a pilot whose employment was compulsory under the laws of the port. See further *Logue Stevedoring Co. v. Dalzellance*, 198 F. 2d 369 (2 Cir. 1952).

By way of further illustration, Chief Justice Marshall in *The Little Charles*, 26 Fed. Cases 979, 982, quoted with approval by Mr. Justice Story in *The Malek Adhel*, 43 U. S. (2 How.) 210 (1844), stated:

> "This is not a proceeding against the owner, it is a proceeding against the vessel for an offense committed by the vessel; which is not the less an offense, and does not the less subject her to forfeiture, because it was committed without the authority and against the will of the owner. It is true that inanimate matter can commit no offense. But this body is animated and put in action by the crew, who are guided by the Master. The vessel acts and speaks by the Master. She reports herself by the Master. It is, therefore, not unreasonable that the vessel should be affected by this report. . . . The thing is here primarily considered as the offender, or rather the offense is primarily attached to the thing."

See also *The Barnstable*, 181 U. S. 464 (1901).

Likewise a vessel must respond in rem for damage caused during a demise charter. When this question first came before this Court, it was an accepted fact that *in rem* liability existed and the only issue indicated was whether the owner or demisee bore the ultimate responsibility under the charter party. *The Barnstable*, 181 U. S. 464 (1901). See also *Logue Stevedoring Co. v. Dalzellance*, 198 F. 2d 369 (2 Cir. 1952); *Davis v. M/V Esso Delivery No. 13*, 100 F. Supp. 285 (D. Md. 1951); *United States v. The Helen*, 164 F. 2d 111 (2 Cir. 1947).

In the recent case of *Crumady v. Joachim Hendrik Fisser*, 358 U. S. 423, this court gave further indication of its recognition of these principles when it stated:

> "The warranty which a stevedore owes when he goes aboard a vessel to perform services is plainly for the benefit of the vessel whether the vessel's owners are parties to the contract or not. That is enough to bring the vessel into the zone of modern law that recognizes rights in third-party beneficiaries. Restatement, Law of Contracts, § 133."

Further, even though a shipowner may not be liable in personam where the vessel is demised by a bareboat charter and the unseaworthiness arises after the demise, the vessel itself is liable. Thus in *Cannella v. Lykes Bros. S. S. Co.*, 174 F. 2d 794 (2 Cir. 1949), cert. den. 338 U. S. 859, it was stated at page 796:

> "If the demisee becomes liable for breach of warranty of unseaworthiness, a maritime lien arises upon the ship securing the obligee. Regardless of whether such lien arises when the demisee becomes liable for other default, we cannot doubt that one does arise when, as here, the liability is imposed in lieu of a warranty of seaworthiness, and upon the theory that, even where there is such a warranty, the resulting liability sounds in tort. Since the lien extends to unseaworthiness supervening after delivery, as well as that already existing, the owner demisor, so far as his ship will answer, is initially subject to a larger liability than is subject to under the putative imposed liability, although in cases of supervening unseaworthiness the eventual loss would no doubt fall on the demisee."

In *Grillea v. United States*, 232 F. 2d 919 (2 Cir. 1956) a longshoreman, injured aboard a vessel owned by the United States, but demised to his employer under a bareboat charter agreement, filed a libel in rem against the vessel. The unseaworthiness arose after the demise and, therefore, Judge Hand ruled that an in personam action could not lie against the owner of the vessel. Despite this lack of an underlying in personam liability, Judge Hand ruled that a maritime lien could be imposed upon the vessel. He stated that the claim based upon a maritime lien was upon a different cause of action from that which arose in personam. Thus, in a factual situation precisely the same as that at bar, the Second Circuit, speaking through Judge Learned Hand, could see no reason why the vessel could not be subjected to in rem liability in a situation where there was

no underlying in personam liability. See also *Leotta v. The Esparta*, 188 F. Supp. 168 (S. D. N. Y. 1960).

The cases of *Latus v. United States*, 277 F. 2d 264 (2 Cir. 1960), and *Noel v. Isbrandtsen*, 287 F. 2d 783, by contrast further illustrate this point. Both cases involved vessels which were out of navigation. Accordingly, no warranty of seaworthiness could possibly arise. See *West v. U. S.*, 361 U. S. 118 (1959). Therefore, in both cases it was held that there could be no possible recovery in view of the fact that there was no duty breached. In *Latus*, Judge Hand stated that "a longshoreman might sue a ship in rem if he was injured by her unseaworthiness which no one denied." And in *Noel*, Chief Judge Sobeloff stated:

> ". . . It is one thing to hold that a conviction or liability in personam is not a condition precedent to the action in rem; it would be quite another to say that the vessel may be held accountable as an entity where there has been no violation of the warranty of seaworthiness or a breach of duty on the part of anyone."

Norris, in his Law of Seamen, summarizes the ruling case law as follows:

> ". . . The maritime lien gives the lienor a right of action against the vessel herself and ignores the owner personally. The ship is personalized. . . . A lien is given . . . and made on the strength of the vessel as security. *Thus the vessel can be held liable on a lien even though the owner may not be personally liable*, as a debt incurred on the credit of the ship by a charterer under a demise charter. The maritime lien, . . . has been created by law for the purpose of furnishing wings and legs to the vessel . . ." 1 Norris, Law of Seamen (1951), p. 462. (Emphasis supplied.)

The foundation of the rule that injury impresses upon the wrongdoing vessel a maritime lien and gives to the party injured a property right in the offending ship is the prin-

ciple of the maritime law that the ship, by whomsoever owned, or navigated is considered as herself the wrongdoer, liable for the tort and subject to a maritime lien for damages. *The John G. Stevens,* 170 U. S. 114.

The Bold Buccleugh, supra, was the first enunciation of the principle that all maritime liens, from whatever source arising, are to be treated as a property interest in the vessel. That decision has been approved by this court. See *The John G. Stevens, supra.* American maritime law has traditionally recognized the vessel for these purposes as a personality and independent of its owners and operators. It is so completely a separate and distinct juridical entity that it is sued, held liable and financially answerable for its trespasses. This principle is explained through the historical development of the maritime law in America. In this regard, Benedict states:

> "The doctrine of the personality of the ship may be described as a fiction, but the fiction is rather in the mode of expression, than in the substance of the law. The principle is that one . . . who through the instrumentality of the ship, has suffered a wrong that is within the maritime jurisdiction, shall have by way of security or redress, an enforceable interest in the ship. (Citing Kruass Bros. Lumber Co. v. The Pacific Cedar, 290 U. S. 117, 78 L. ed. 216; 54 Sup. Ct. 105) . . . The ship is so much an independent enterprise, a juridical aggregate of rights and liabilities that her creditors virtually go shares in her; . . . A maritime lien is the necessary basis for every admiralty proceeding in rem. Such a lien is a right of property and not a mere matter of procedure:" 1 Benedict on Admiralty, pp, 17-18.

> "Maritime liens differ from common law liens in a very important point. A common law lien is always connected with a possession of the thing: it is simply a right to retain. On the other hand, a maritime lien

does not in any manner depend upon possession. It is a right affecting the thing, and giving a sort of proprietary interest in it, and a right to proceed against it, to recover that interest." 1 Benedict on Admiralty, p. 24.

Perhaps the clearest exposition of the independent personality and liability of a vessel is found in the historical review by Mr. Justice Holmes in The Common Law, pages 25 to 32, wherein it is stated:

> "A ship is the most living of inanimate things. . . . It is only by supposing the ship to have been treated as if endowed with personality, that the arbitrary seeming peculiarities of the Maritime Law can be made intelligible, and on that supposition they at once become consistent and logical." pp. 26-27.

This Court, speaking through Mr. Justice Reed, stated:

> ". . . Such personification of the vessel, treating it as a juristic person whose acts and omissions, although brought about by her personnel, are personal acts of the ship for which, as a juristic person, she is legally responsible, has long been recognized by this Court . . ." *Canadian Aviator Ltd. v. U. S.*, 324 U. S. 215, 224, 89 L. Ed. 901, 908 (1945). See also, *Atlantic Steamer Supply Co. v. The SS Tradewind*, 153 F. Supp. 354, 357 (D. Md. 1957).

In summary, there is no doubt that, under the American maritime law, a lien attaches against the vessel in cases of personal injury and the vessel as an independent entity is considered the personality accountable for the damages, without regard to the liability of the owner or any other personality.[1] The in rem liability is not dependent upon, or related to concepts of in personam liability.

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1. *The Palmyra*, 25 U. S. (12 Wheat.) 1, 6 L. Ed. 531 (1827); *U. S. v. Malek Adhel*, 43 U. S. (2 How.) 210, 11 L. Ed. 239 (1844); *The China*, 74 U. S. (7 Wall.) 53, 19 L. Ed. 67 (1869); *The John G. Stevens*, 170 U. S. 113, 42 L. Ed. 969 (1898); *The Barnstable*,

The court below, in ruling that no in rem obligation could come into existence absent a pre-existent in personam obligation, completely ignored the personification theory of liens which lies at the foundation of our maritime law. *Price, Law of Maritime Liens*, 118, 115 (1940).

The sole basis for destroying the petitioner's maritime lien in the case at bar was the fact that the charterer was also the stevedore-employer, whose exclusive liability to its employees was circumscribed by the Longshoremen's and Harbor Workers' Compensation Act. In concluding that there was no in rem liability without a correlative in personam liability, the majority below relied upon the case of *Smith v. The Mormacdale*, 198 F. 2d 849 (3 Cir. 1952), and ignored the dictates of this Court in *Plamals v. The Pinar del Rio*, 277 U. S. 151 (1928), and *Seas Shipping Company v. Sieracki*, 328 U. S. 85 (1946).

In the *Pinar del Rio* case this Court laid down the rule that a maritime lien must precede any *in rem* liability of a vessel. There, the plaintiff, a seaman, sued the vessel in rem under the Jones Act, 46 U. S. C. A. 688. This Court held that since the Jones Act did not expressly create a lien against the vessel, none could be inferred and, therefore, no action in rem could exist under that legislation. The Court ruled, however, that the seaman did have two avenues of approach: an action *in personam* against the employer under the maritime law as modified by the Jones Act, or his existing action *in rem* against the vessel under the general maritime law which provided the necessary lien which remained unaffected by the Jones Act.

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181 U. S. 464 (1901); *The Osceola*, 189 U. S. 158, 175, 47 L. Ed. 760 (1903); *Canadian Aviator, Ltd. v. U. S.*, 324 U. S. 215, 89 L. Ed. 901 (1945); *Cannella v. Lykes Bros. Steamship Co.*, 174 F. 2d 794 (2d Cir. 1949); *Carbon Black Export, Inc. v. S. S. Monrosa*, 254 F. 2d 297 (5th Cir. 1958); *Crumady v. J. H. Fisser*, 358 U. S. 423, 3 L. Ed. 2d 413; 1 *Benedict on Admiralty*, 17 et seq.; *Gilmore and Black, The Law of Admiralty*, Chap. IX (3), p. 494; 1 Norris, *Law of Seamen* (1951), p. 462; *Robinson on Admiralty* (1939), pp. 364, 612.

The Longshoremen's Act similarly created an *in personam* liability for compensation against the employer without creating any right of lien against the vessel. Just as the Jones Act, it left unchanged any already established lien rights. It gave the longshoremen new statutory rights against his employer *in personam* and gave the latter a defense against damage actions *in personam*. Thus, the rights of the longshoremen, except as limited by statute, remain unaffected either "by construction, analogy or inference" (cf. *The Pinar del Rio*, U. S. at 156, L. Ed. at 829). Accordingly, the longshoreman, as the seaman, may invoke his remedy against the ship under the general maritime law or they may make claim against their employers under the Compensation Act. Thus, as the Jones Act, which applied to the employer-employee relationship, has no effect upon the seaman's right *in rem* against the vessel, neither does the Longshoremen's Act affect the longshoreman's right in that regard. The *Pinar del Rio* treated the vessel as a separate and distinct legal entity.

Subsequently, in *Seas Shipping Co. v. Sieracki*, 328 U. S. 85 (1946), the Supreme Court reconfirmed the continuation of these rights. The Court said at 102:

> "We may take it therefore that Congress intended the remedy of compensation to be exclusive as against the employer . . . But we cannot assume, in face of the Act's explicit provisions, that it intended this remedy to nullify or affect others against their persons. Exactly the opposite is true. The legislation therefore did not nullify any right of the longshoreman against the owner of the ship, except possibly in the instance, presumably rare, where he may be hired by the owner. The statute had no purpose or effect to alter the stevedore's rights as against any but his employer alone."

The Supreme Court in *Sieracki* limited the effect of the Longshoremen's and Harbor Workers' Act to the employer alone. In recognizing the continued existence of all prior

rights other than against the employer, this Court cited with approval *The Pacific Pine*, 31 F. 2d 152, 155 (W. D. Wash. 1929) which held that the ship is a third person against whom the longshoreman may bring his libel in rem.

It was the recognition of this line of authority by Chief Judge Biggs which caused him to state:

> "The majority view that no *in rem* obligation came into existence because there was no subsisting *in personam* obligation is untenable. The majority view seems to be contrary to the reasoning of the Supreme Court in Plamals v. The Pinar Del Rio, 277 U. S. 151 (1926), and Seas Shipping Co. v. Sieracki, 328 U. S. 85 (1946). A bare-boat charter cannot insulate the ship owner from liability. The Supreme Court again and again has held that the ship owner has a non-delegable absolute duty to maintain the vessel in a seaworthy condition. A charterer under circumstances such as those at bar does not gain immunity because of the Longshoremen's and Harbor Workers' Compensation Act. I think the case is wrongly decided for it takes away from the longshoreman the very important protective warranty of seaworthiness and limits Sieracki greatly."

II. Where a Longshoreman Employee of the Bareboat Charterer Is Injured as a Result of the Unseaworthiness of the Vessel the Charterer Having Contracted to Indemnify the Vessel Owner for Any Liens or Claims Arising While the Vessel Is Under Charter the Vessel Is Liable in Rem Independently of the Charterer's Liability Under the Compensation Act.

The majority below places its prime reliance upon its prior decision in *Smith v. "The Mormacdale"*, 198 F. 2d 849 (3 Cir. 1952). A review of the relevant authorities makes it quite clear that the Court of Appeals was incorrect in its decision in *Smith v. "The Mormacdale"* for

it failed to give cognizance to the American Law of liens and the personification theory upon which that law is based. In the case at bar the Third Circuit compounded their error and extended the *Smith* concept beyond that which was originally intended. An analysis of the *Smith* opinion indicates, as Judge Staley stated, its total inapplicability to the factual situation at hand. The Court in *Smith* decided a case where the vessel was the property of the employer and held that in such action the suit against the vessel was really against the employer who was protected from liability by the Longshoremen's Act. The Court there made it abundantly clear that only where the shipowner was the employer did the statute lend its protective cloak.

That this is the true analysis of the *Smith* case is necessarily buttressed by Judge Staley's dissent from the denial of rehearing in the case at bar. Judge Staley, the author of the opinion in *Smith*, dissented in this case because he felt the concept set forth in *Smith* should not apply to a case where the employer was not also the shipowner.

In the instant case, the majority below has applied *Smith* to a situation where the employer is not the shipowner, but a bareboat charterer. It felt that the distinction was not significant in view of the fact that demisee acquired control of the vessel. However, the demisee does not acquire ownership of the vessel. The owner retains his title and his pecuniary interest in the vessel and its operation. See *Guzman v. Pichirilo*, 369 U. S. 895 (1962). He continues to have the obligation that the vessel be seaworthy as this obligation remains non-delegable, continuing, and the shipowner is not relieved thereof by giving up control of the vessel. *Seas Shipping Co. v. Sieracki*, 328 U. S. 85 (1946).

The mechanism of a lease of the vessel does not destroy the interest of the owner nor his concomitant nondelegable obligations. The owner's interest remains and

so does the longshoreman's right of lien against the vessel of which the owner holds title. The distinction between a charterer-employer and an owner-employer is both significant and substantial. The charterer may take the owner's control, but not his ownership and related obligations. Ownership *pro hac vice* does not involve passage of title nor does it require the vessel to be returned to the rightful owner free of lien. Significantly, the demise does not make the longshoreman the employee of the owner.

Nor is it material that the employer may ultimately have to pay. Ultimate payment in this case arises out of a contract of indemnity between the shipowner and the charterer-employer. As the liability over is traceable to the contract, Pan-Atlantic cannot realistically argue that this in rem action against the vessel is an action against itself. It cannot raise the exclusive protection of the Compensation Act to offset its contracted-for liability which it has voluntarily and clearly assumed. While the defense of a Compensation Act is a personal defense of Pan-Atlantic, it must be remembered that Pan-Atlantic is not being sued, its vessel is not liable for the damages, and its reimbursement to the vessel for unseaworthiness which may have arisen during the demise is immaterial to the case at hand. See *Ryan Stevedoring Co. v. Pan-Atlantic SS. Corp.*, 350 U. S. 124 (1956). It was there contended that since the employer's obligation was exclusive under the Compensation Act, the employer could not be bound to pay ultimately. Mr. Justice Burton concluded that the exclusive liability provision of the Compensation Act did not protect the employer against claims based on contractual rights of indemnification. See also *Crawford v. Pope & Talbot, Inc.*, 206 F. 2d 784, 792 (3 Cir. 1953).

Yet, several of the Justices of this Court were reluctant to concur in *Ryan* for fear that the placing of ultimate responsibility on the stevedore on the basis of breach of warranty of workmanlike performance would vitiate the

underlying basis for the unseaworthiness doctrine as expressed in *Sieracki*. When the protective scope of the unseaworthiness doctrine was broadened to include longshoremen, this Court observed:

> "Nor does it follow from the fact that the stevedore gains protections against his employer appropriate to the employment relation as such, that he loses or never acquires against the shipowner the protections, not peculiar to that relation, which the law imposes as incidental to the performance of that service. Among these is the obligation of seaworthiness. It is peculiarly and exclusively the obligation of the owner. It is one he cannot delegate. By the same token it is one he cannot contract away as to any workman within the scope of its policy." *Sea Shipping Co. v. Sieracki*, supra, 328 U. S. 85 at page 100.

If the doctrine of *Sieracki* is to remain viable, this court must correct the ruling of the Court of Appeals for the Third Circuit.

CONCLUSION.

The decision of the court below permits the owner to insulate himself by a charter, and the charterer to protect himself by pleading immunity under the Longshoremen's and Harbor Workers' Act. This deprivation of the protective warranty of seaworthiness conflicts with the principles enunciated by this court in *Sieracki* and the *Pinar Del Rio* cases. It conflicts with the decision of Judge Learned Hand in *Grillea*. It permits the shipowner to deny his continuing and nondelegable duty by a simple device that has been common and is becoming more prevalent. The application of the decision of the court below makes it unnecessary for a longshoreman to be presented with a safe and seaworthy vessel for the combination of the Longshoremen's and Harbor Workers' Act and the bareboat charter results in

the insulation of all parties from liability. It brings into sharp focus the error of the Court not only in this case but in *Smith v. Mormacdale*. It fails to give recognition to the doctrine that under our theory of liens a vessel is an independent personality separate and apart from her owner.

The present decision is such a sharp departure from historically recognized principles of maritime law and so contrary to the characteristic features and humanitarian policies thereof, that it should not be permitted to stand. It is based on the erroneous view that in rem liability may not be imposed without an underlying in personam liability. It literally uproots and overturns our personification theory of liens and destroys the property rights of injured maritime workers in the vessels.

WHEREFORE, your petitioners respectfully pray that the judgment of the Court of Appeals for the Third Circuit be reversed.

Respectfully submitted,

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